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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Weenna Bucay-Couto

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EXAMINER

DOWE, KATHERINE MARIE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

08/03/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. The following is in response to the amendment filed July 9, 2010 after the Final Rejection mailed May 11, 2010.
2. Applicant's arguments have been fully considered but they are not persuasive.
3. Applicant argues Sawhney does not teach injecting a first fluid comprising a non-crosslinkable polymer since the release rate modification agent (interpreted as the non-crosslinkable polymer) is not taught to be applied independently of the crosslinkable polymer and crosslinking agent solutions. The examiner notes that the features upon which applicant relies (i.e., the *independent* delivery of crosslinkable polymer and the non-crosslinkable polymer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As presently claimed, injection of the first fluid does not necessarily have to be performed and completed prior to injection of the second fluid. Simultaneous injection of the first and second fluids meets the claimed limitations.
4. Applicant has provided no evidence to establish an unobvious difference between the claimed product and the prior art, but rather has merely argued such alleged difference. Mere arguments can not take the place of evidence. *In re Walters*, 168 F.2d 79,80, 77 USPQ 609,610 (CCPA 1948); *In re Cole*, 326 F.2d. 769,773, 140 USPQ 230,233 (CCPA 1964); *In re Schulze*, 346 F.2d 600,602, 145 USPQ 716,718 (CCPA 1965); *In re Lindner*, 457 F.2d 506,508, 173 USPQ 356,358 (CCPA 1972); *In re Pearson*, 494 F.2d 1399,1405, 181 USPQ 641,646 (CCPA 1974); *Meitzner v. Mindick*, 549 F.2d 775,782, 193 USPQ 17,22 (CCPA), cert. Denied, 434 U.S. 854 (1977); *In re DeBlauwe*, 736 F.2d 699,705, 222 USPQ 191,196 (Fed. Cir. 1984). Applicant must provide evidence that it would not have been obvious to choose from the variety of

possible materials such that the chosen crosslinkable polymer was less viscous than the chosen non-crosslinkable polymer.

5. In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references of Sawhney and Weikel, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). Applicant argues the compositions disclosed by Sawhney allow rapid polymerization through physical crosslinking at the deposition site to localize hydrogel forming precursors for a period of time sufficient for more resilient chemical crosslinks to be formed. Thus, Applicant contends a container as taught by Weikel is unnecessary. The examiner respectfully disagrees. Weikel teaches the container allows more controlled deployment of the crosslinked polymer and reduces the risk of the polymeric precursors from migrating to other areas of the body (col 6, ll 5-13). Sawhney recognizes the problem of polymeric precursors migrating prior to complete polymerization as evidenced by the composition that allows for rapid physical cross-linking prior to chemical crosslinking. Thus, it would have been obvious to further improve Sawhney's invention by introducing the polymeric precursors into a container that prevents migration that may occur prior to the physical crosslinking or for the minimal amount of material that does not undergo physical cross-linking. Applicant has not provided evidence that the invention of Sawhney is not capable of being delivered into a container as taught by Weikel.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine Dowe
July 29, 2010

/K. M. D./
Examiner, Art Unit 3734